

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9232 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER ROADS AND BUILDING DEPARTMENT

Versus

RAMESHKUMAR K BHATT

Appearance:

MR PREMAL R JOSHI for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /08/1999

C.A.V. JUDGEMENT

The petitioner through this writ petition has challenged the award dated 17.6.1998 passed by the Labour Court, Rajkot and has prayed for quashing of the said award being illegal.

2. The brief facts giving rise to this petition are as under:-

3. The State of Gujarat, Roads and Building Department by its letter sanctioned one Division and four sub-divisions on ad hoc basis upto 28.8.1982. In pursuance of this order the respondent was appointed as 'Tracer' on purely temporary basis from 18.12.1981 to 28.8.1982 in the Panchayat Sub division, Jasdan and he resumed duties on 19.12.1981. Since the posts were created on ad hoc basis with a view to complete the work within a prescribed period for rural roads, the respondent was appointed under that Scheme. Subsequently the Panchayat had no need to continue the respondent because the Government stopped paying grant. Consequently, the respondent was removed from service. In the appointment letter it was clearly mentioned that the appointment of the respondent was purely on ad hoc basis and after expiry of the term his services can be terminated at any time without giving any reason or notice. One division and three sub-divisions were closed by the Government with effect from 31.8.1982. The 'Tracers' who were appointed on regular basis were accommodated on the post of the petitioner. Consequently, the services of the respondent were no more required. The respondent raised belated industrial dispute in the year 1988. The said industrial dispute was referred to the Labour Court which rendered the impugned award directing reinstatement of the respondent with 50% backwages. It is this award which is challenged in this writ petition.

4. The writ petition was admitted on 6.4.1999. The respondent was served. At the initial stage no counter affidavit had been filed by him. As such the learned counsel for the petitioner and the respondent were heard. The learned counsel for the respondent after reading the entire award contended that the award is prima facie legal, hence it requires no interference. On the other hand, the learned counsel for the petitioner contended that the award is illegal because the Labour Court did not take into consideration the fact that the appointment of the respondent was on ad hoc basis for a fixed term and a person appointed for a fixed term could not raise industrial dispute nor he could say that the provisions of Section 25-F of the Industrial Disputes Act were violated.

5. The first point for consideration in this petition is whether the respondent was appointed for a fixed period or that simply because he worked for more than 240 days, his termination was wrongful and he is entitled to be reinstated with backwages at the rate of 50%. The view of the Labour Court that the respondent

was not appointed for a fixed term is contrary to the evidence on record and as such the award can be said to be perverse on this point. If a finding is given ignoring the material evidence or overlooking the material evidence, it can be said to be perverse. Likewise, if a finding is given misinterpreting the documentary evidence, such finding can also be said to be perverse finding. From Annexure-B dated 16.6.1981 it is clear that through this Government Resolution new Divisions and Sub-Divisions under administrative supervision of the Panchayat (Road and Building) Circle were approved on ad hoc basis and posts were also approved on ad hoc basis upto 28.2.1982. Three posts of Junior Engineer/Supervisor/Overseer inter alia were sanctioned. The post of 'Tracer' falls in the category of Junior Engineer. Annexure-C is the appointment letter dated 16.12.1981 to the petitioner. Certain conditions were imposed in this appointment letter. The first condition was that the appointment of the respondent was limited only for the period upto 28.2.1982. It was further mentioned that as his services were ad hoc he has no right over the services. The second condition was that the appointment was made purely on ad hoc basis. On completion of its term at any time he can be discharged without assigning any reason or notice. Thus, these two conditions in the appointment letter are relevant and material which indicate firstly that the appointment of the respondent was for a fixed term upto 28.2.1982 and it was in the nature of ad hoc appointment and secondly the respondent could be discharged on completion of term at any time without assigning any reason or without giving any notice. The respondent took over charge on 19.12.1981. Thus, from the letter of appointment it is clear that the appointment was for a fixed term from 19.12.1981 to 28.2.1982. This appointment was for a specific period for completion of the work for which additional Sub-Division was created. It appears from the writ petition that because the grant was not made available, the Sub-Division could not be continued any further and it was dropped. The employees became surplus. The other Sub-Divisions were also not continued. The employees who were appointed on regular and permanent basis elsewhere were absorbed and the respondent who was appointed for a fixed term was discharged. The interpretation of appointment letter and conditions contained therein holding that it was not a fixed term appointment is contrary to the letter of appointment, the appointment letter hardly suffers from any defect of ambiguity.

6. The learned counsel for the respondent however

argued that after 28.2.1982 no letter of appointment was given to the respondent and still he continued upto 31.8.1982 and as such it will be deemed that it was not a fixed term appointment and that since he served for more than 240 days he could not be discharged on 31.8.1982 without assigning any reasons. It is true that the respondent was continued beyond 28.2.1982 upto 31.8.1982 but this was done in view of the fact that the work for which the petitioner's Sub-Division was created could not be completed upto 28.2.1982. If for completion of work services of the respondent were taken upto 31.8.1982, it will not change the nature of original appointment mentioned in the letter of appointment Annexure-C. Merely because fresh appointment letter was not issued after expiry of term i.e. after 28.2.1982, it will not change the nature of appointment, namely appointment for a fixed term. It seems that the respondent was hardly aggrieved from the order of discharge for sufficiently long period and belated reference was made by him after seven or eight years. In paragraph 4 of the award itself it is mentioned that the stand of the petitioner before the Labour Court was that the respondent had challenged the order dated 31.8.1982 discharging the respondent after seven or eight years. The effect of this belated reference and challenge on this point raised in the written statement of the petitioner was not considered and answered by the Labour Court in the impugned award. It seems that on subsequent after thought the respondent had to make a reference by raising industrial dispute after seven or eight years of the order of discharge. It will therefore be deemed that he had acquiesced in the order of discharge.

7. Even if the plea of acquiescence is not accepted, it may be said that Section 25-F of the Industrial Disputes Act will not apply to persons employed for a fixed term. In State of Rajasthan Vs. R.L. Gahlot, AIR 1996 SC 1001, on similar controversy, the apex court laid down that once appointment is for a fixed period Section 25-F of the Industrial Disputes Act does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It was further held that when the appointment is for a fixed period unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise it cannot be held that the termination is illegal. In its absence the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that power was misused by the management or the appointment for a fixed period was colourable exercise of power.

8. In *M. Venugopal Vs. Divisional Manager, LIC*, (1994) 2 SCC 323 also similar view was taken by the apex court, that once an appointment is for fixed period Section 25F of the I.D. Act does not apply. The facts in the case of *State of Rajasthan Vs. R.L. Gahlot* (Supra) were also almost identical to the facts of the case before me. In that case the respondent was appointed for a period of three months or till the regularly selected candidate assumes office. The respondent was appointed on 28.1.1988 and his appointment came to be terminated on 19.11.1988. Thus, here also though the initial appointment was for a fixed period of three months it was continued slightly beyond that period and the appointment was terminated on 19.11.1988. Similar are the facts in the case before me and as such the case of *State of Rajasthan Vs. R.L. Gahlot* (supra) applies with full force to the facts of the case before me.

9. It cannot be said by any stretch of imagination that the power of discharge was exercised in a mala fide manner by the petitioner nor it can be said that the power of discharge was misused. The order of appointment also cannot be said to have been made in colourable exercise of power. The respondent's appointment was made strictly in accordance with the Government Resolution contained in Annexure-B to the writ petition. Since the work could not be completed by 28.2.1982, the respondent's services were continued till 31.8.1982. Since on 31.8.1982 it was found by the petitioner that the grants were stopped and few divisions had to be closed that the order of discharge against the respondent was passed by the petitioner. No mala fide has been attributed while passing the order of discharge nor any such mala fide is reflected prima facie from the material on record. The order of appointment cannot be said to have been passed in colourable exercise of power. The terms and conditions in the letter of appointment Annexure-C indicate that it was issued in a bona fide manner keeping in view the Government Resolution contained in Annexure-B. There is also nothing on record to indicate that the petitioner misused the power and discharged the respondent. Thus, if the power was not misused nor is vitiated by mala fide nor the power to appoint suffers from the vice of colourable exercise of power, the impugned order of discharge could not be quashed by the Labour Court and as such the impugned award becomes patently illegal and it cannot be sustained. There was no justification for the Labour Court to apply Section 25F of the Act on the facts and

circumstances of the case before it. Section 25F of the Act was hardly applicable to an employee who was appointed for a fixed term. If this is so, then the order for 50% backwages also becomes contrary to law with the result that the entire award becomes illegal. It is therefore difficult to sustain the impugned award. It has, therefore, to be quashed.

The result is that the writ petition succeeds and is hereby allowed with no order as to costs. The impugned award Annexure-A dated 17.6.1998 is hereby quashed.

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